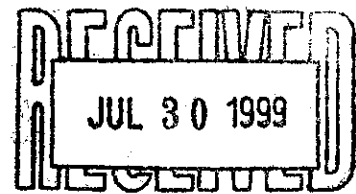


CITY OF MERCER ISLAND
ORDINANCE NO. 99C-07



AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON AMENDING MERCER ISLAND'S COMMUTE TRIP REDUCTION (CTR) PLAN, ORDINANCE NO. A-101, AND UPDATING MEASURES AS REQUIRED BY RCW 70.94.527 AND AMENDING TITLE 10 OF THE CITY CODE BY UPDATING CHAPTER 10.70 THERETO ENTITLED "COMMUTE TRIP REDUCTION PLAN".

WHEREAS, Washington State's CTR Law was adopted by the 1991 Legislature and incorporated into the Washington Clean Air Act; and

WHEREAS, its intent is to improve air quality, reduce traffic congestion, and reduce the consumption of petroleum fuels through employer-based programs that encourage the use of alternatives to the single-occupant vehicle for commute trips; and

WHEREAS, the Mercer Island City Council passed Ordinance No. A-101, in January, 1993, adopting the original Mercer Island CTR Plan and implementing measures as required by RCW 70.94.527; and

WHEREAS, the City of Mercer Island continues to recognize the importance of increasing awareness of air quality, and energy consumption; and

WHEREAS, a number of state legislative and administrative changes to the CTR Program have taken place over the past two years; and

WHEREAS, many of these changes require corresponding changes in local CTR ordinances; and

WHEREAS, RCW 70.94.527(4) requires local CTR plans and ordinances to be consistent with the state law and guidelines established by the CTR Task Force; and

WHEREAS, this ordinance updates Mercer Island's local plan to make it consistent with the revised CTR Task Force Guidelines; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1 Title 10 Mercer Island City Code, "VEHICLES AND TRAFFIC", Chapter 10.70 "COMMUTE TRIP REDUCTION PLAN" is hereby amended to read as follows:

Chapter 10.70

COMMUTE TRIP REDUCTION PLAN

Sections:

10.70.010	Definitions.
10.70.020	Commute trip reduction goals.
10.70.030	Designation of CTR zone and base year values.
10.70.040	Adoption of CTR plan.
10.70.050	Responsible agency.
10.70.060	Applicability.
10.70.070	Requirements for employers.
10.70.080	Recordkeeping.
10.70.090	Schedule and process for CTR reports, program review and implementation.
10.70.100	Good faith effort
10.70.110	Requests for exemptions / modifications of CTR requirements.
10.70.120	Credit for transportation demand management efforts.
10.70.130	Employer peer review group.
10.70.140	Appeals of administrative decisions.
10.70.150	Enforcement.

Section 10.70.010 Definitions.

For the purpose of this chapter, the following definitions shall apply in the interpretation and enforcement of this chapter.

- A. "Affected employee" means a full-time employee who begins his or her regular work day at a single work site between 6 am and 9 am (inclusive) on two or more weekdays per week for at least twelve (12) continuous months. For the purposes of this chapter, shareholders, principles and associates in a corporation, partners (general or limited) in a partnership and participants in a joint venture are to be considered employees.
- B. "Affected employer" means a public or private employer that, for twelve (12) continuous months, employs one-hundred (100) or more full-time employees at a single work site who are scheduled to begin their regular work day between 6 am and 9 am (inclusive) on two or more weekdays. The intent is to include any employer that has one-hundred (100) or more full-time employees scheduled to begin their regular workday between 6 am and 9 am, even if the individual employees vary overtime. Construction work sites, when the expected duration of the construction is less than two years, are excluded from this definition.
- C. "Alternative mode" means any type of commute transportation other than that in which the single occupant motor vehicle is the dominant mode, including telecommuting and compressed workweeks if they result in reducing commute trips.
- D. "Alternative work schedules" means programs such as compressed workweeks that eliminate work trips for affected employees.

- E. **"Base year"** means the period on which goals for vehicle miles traveled (VMT) per employee and proportion of single-occupant vehicle (SOV) trips shall be based.
- F. **"Carpool"** means a motor vehicle occupied by two (2) to six (6) people traveling together for their commute trip that results in the reduction of a minimum of one motor vehicle commute trip.
- G. **"City"** means the city of Mercer Island.
- H. **"Commute Trips"** mean trips made from a worker's home to a work site with a regularly scheduled arrival time of 6 am to 9 am (inclusive) on weekdays.
- I. **"Commuter Matching Service"** means a system that assists in matching commuters for the purpose of commuting together.
- J. **"Compressed workweek"** means an alternative work schedule, in accordance with employer policy, that regularly allows a full-time employee to eliminate at least one work day every two weeks by working longer hours during the remaining days, resulting in fewer commute trips by the employee. This definition is primarily intended to include weekly and biweekly arrangements, the most typical being four 10-hour days or 80 hours in nine days, but may also include other arrangements. Compressed workweeks are understood to be an ongoing arrangement.
- K. **"CTR plan"** means the city of Mercer Island's plan as set forth in this chapter to regulate and administer the CTR programs of affected employers within its jurisdiction.
- L. **"CTR program"** means an employer's strategies to reduce affected employees' SOV use and VMT per employee.
- M. **"CTR zone"** means an area, such as a census tract or combination of census tracts, within Mercer Island characterized by similar employment density, population density, level of transit service, parking availability, access to high occupancy vehicle facilities, and other factors that are determined to affect the level of SOV commuting.
- N. **"Dominant mode"** means the mode of travel used for the greatest distance of a commute trip.
- O. **"Employee"** means anyone who receives financial or other remuneration in exchange for work provided to an employer, including owners or partners of the employer.
- P. **"Employer"** means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, whether public, nonprofit or private, that employs workers.
- Q. **"Exemption"** means a waiver from any or all CTR program requirements granted to an employer City based on unique conditions that apply to the employer or employment site.
- R. **"Flex-time"** is an employer policy allowing individual employees some flexibility in choosing the time, but not the number, of their working hours to facilitate the use of alternative modes.

- S. **"Full-time employee"** means a person other than an independent contractor scheduled to be employed on a continuous basis of 52 weeks per year for an average of at least 35 hours per week.
- T. **"Good Faith Effort"** means that an employer has met the minimum requirements identified in RCW 70.94.531 and this ordinance; and is working collaboratively with the City to continue its existing CTR program or is developing and implementing program modifications likely to result in improvements to its CTR program over an agreed-upon length of time.
- U. **"Implementation"** means active pursuit by an employer of the CTR goals of RCW 70.94.521 through 70.94.551 and this chapter as evidenced by appointment of a transportation coordinator, distribution of information to employees regarding alternatives to SOV commuting and commencement of other measures according to their CTR program and schedule.
- V. **"Mode"** means the type of transportation used by employees, such as single-occupant motor vehicle, rideshare vehicle (carpool, vanpool), transit, ferry, bicycle and walking, compressed work schedule and telecommuting.
- W. **"Peak period"** means the hours from 6 am to 9 am (inclusive), Monday through Friday, except legal holidays.
- X. **"Peak period trip"** means any employee trip that delivers the employee to begin his or her regular workday between 6 am and 9 am (inclusive), Monday through Friday, except legal holidays.
- Y. **"Proportion of single-occupant vehicle trips" or "SOV rate"** means the number of commute trips over a set period made by affected employees in SOV's divided by the number of affected employees working during that period.
- Z. **"Single-occupant vehicle (SOV)"** means a motor vehicle occupied by one employee for commute purposes, including a motorcycle.
- AA. **"Single-occupant vehicle (SOV) trips"** means trips made by affected employees in SOV's.
- BB. **"Single work site"** means a building or group of buildings on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way occupied by one or more affected employers.
- CC. **"Telecommuting"** means the use of telephones, computers or other similar technology to permit an employee to work from home, eliminating a commute trip, or to work from a work place closer to home, reducing the distance traveled in a commute trip by at least half.
- DD. **"Transportation Demand Management (TDM)"** means a broad range of strategies that are primarily intended to reduce and reshape demand on the transportation system.
- EE. **"Transportation Management Organization (TMO)"** means a group of employers or an association representing a group of employers in a defined geographic area. A TMO may represent employers within specific city limits or may have a sphere of influence that extends beyond city limits.

- FF. "Vanpool" means a vehicle occupied by from seven (7) to fifteen (15) people traveling together for their commute trip that results in the reduction of a minimum of one motor vehicle trip. A vanpool trip counts as zero (0) vehicle trips.
- GG. "Vehicle miles traveled (VMT) per employee" means the sum of the individual vehicle commute trip lengths in miles made by affected employees over a set period divided by the number of affected employees during that period.
- HH. "Waiver" means an exemption from CTR program requirements granted to an employer by the City based on unique conditions that apply to the employer or employment site.
- II. "Week" means a seven-day calendar period, starting on Monday and continuing through Sunday.
- JJ. "Weekday" means any day of the week except Saturday or Sunday.

Section 10.70.020 Commute Trip Reduction Goals

The commute trip reduction goals for employers affected by this chapter are to achieve the following reductions in vehicle miles traveled per employee or the proportion of single-occupancy vehicles from the base year value, as established in the 1992 employee survey process or within the 180 days that an employer has met the definition of "affected employer":

- A. Fifteen percent by January 1, 1995, or two years from the established base year;
- B. Twenty percent by January 1, 1997, or four years from the established base year;
- C. Twenty five percent by January 1, 1999, or six years from the established base year;
- D. Thirty five percent by January 1, 2005, or twelve years from the established base year.

Section 10.70.030 Designation of CTR Zone and Base Year Values.

Employers in the City of Mercer Island fall within the East King CTR zone as shown on the map of Central Puget Sound CTR zones attached to the ordinance codified in this chapter.

The base year value (as established in 1992) of this zone for proportion of SOV trips shall be 85 percent. The base year value (as established in 1992) for vehicle miles traveled (VMT) per employee shall be set at 9.3 miles. Commute trip reduction goals for major employers shall be calculated from either these values or those that are established by the individual worksite from their own base year measurement.

Section 10.70.040 City of Mercer Island CTR Plan

The 1992 City of Mercer Island CTR plan set forth in Attachment A of the ordinance codified in this chapter is wholly incorporated herein by reference. This plan may be amended by further action of the City Council.

Section 10.70.050 Responsible Agency

The City's Benefits Office shall be responsible for implementing this chapter, the CTR plan and the City's CTR program for its own employees. The City Manager's Office shall have the authority to issue such rules and administrative procedures as are necessary to implement this chapter.

Section 10.70.060 Applicability

The provisions of this ordinance shall apply to any affected employer at any single work site within the corporate limits of the City of Mercer Island. Employees will only be counted at their primary worksite. The following classifications of employees are excluded from the counts of employees: 1). seasonal agricultural employees, including seasonal employees of processors of agricultural products; and 2) employees of construction worksites when the expected duration of the construction is less than two years.

A. Notification of Applicability

1. Known affected employers located in Mercer Island will receive formal written notification by certified mail that they are subject to this chapter within 30 days after passage of the ordinance codified in this chapter.
2. Affected employers that, for whatever reason, do not receive notice within 30 days of passage of said ordinance must identify themselves to the City within 180 days of the passage of said ordinance. Once they identify themselves, such employers will be granted 180 days within which to develop and submit a CTR program.
3. Any existing employer of 75 or more persons who obtains a business license in the City, subsequent to the passage of said ordinance, will be required to complete an employer assessment form to determine whether or not an employer will be deemed affected or non-affected in accordance with the provisions of this chapter.

B. New Affected Employers Employers that meet the definition of "affected employer" in this chapter must identify themselves to the city within 180 days of either moving into the boundaries of Mercer Island or growing in employment at a work site to 100 or more affected employees. Once they identify themselves, such employers shall be granted 180 days to develop and submit a CTR program.

New affected employers shall have two years to meet the first CTR goal of a 15 percent reduction from the base year values identified in MICC 10.70.030; four years to meet the second goal of a 20 percent reduction; six years to meet the third goal of a 25 percent reduction; and twelve years to meet the fourth goal of 35 percent reduction from the time they begin their program.

C. Change in Status as an Affected Employer Any of the following changes in an employer's status will change the employer's CTR program requirements:

1. If an affected employer can document that it faces an extraordinary circumstance that will change its status as an affected employer, it can apply for an exemption (see MICC 10.70.110A);
2. If an employer initially designated as an affected employer no longer employs 100 or more affected employees and has not employed 100 or more affected employees for the past 12 months, that employer is no longer an affected employer. It is the responsibility of the employer to provide documentation to the City that it is no longer an affected employer;
3. If the same employer returns to the level of 100 or more affected employees within the same 12 months after its change in status to an "unaffected" employer, that employer shall be treated as a

new affected employer, and will be subject to the same program requirements as other new affected employers.

Section 10.70.070 Requirements for Employers

An affected employer is required to make a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, to develop and implement a CTR program that will encourage its employees to reduce VMT per employee and SOV commute trips. The CTR program must include the mandatory elements described below, including submittal of a CTR program description and annual progress report. Transportation Management Organizations may submit CTR program descriptions and annual reports on behalf of employers; however, each employer shall remain accountable for the success of its program.

A. Description of Employer's CTR Program Each affected employer is required to submit a description of its CTR program to the City on the official form available from the City of Mercer Island. At a minimum the employer's description must include:

1. General description of each employment site location within the City limits, including transportation characteristics, surrounding services and unique conditions experienced by the employer or its employees;
2. Number of employees affected by the CTR program;
3. Documentation of compliance with the mandatory CTR program elements (as described in subsection B of this section);
4. Description of the additional elements included in the CTR program; and
5. Schedule of implementation, assignment of responsibilities and commitment to provide appropriate resources to carry out the CTR program.

B. Mandatory Program Elements Each employer's CTR program shall include the following mandatory elements:

1. **Transportation Coordinator.** The employer shall designate an employee transportation coordinator (ETC) to administer the CTR program. The coordinator's and/or designee's name, location and telephone number must be displayed prominently at each affected work site. The coordinator shall oversee all elements of the employer's CTR program and act as liaison between the employer and the City. An affected employer with multiple sites may have one transportation coordinator for all sites.
2. **Information Distribution.** Information about alternatives to SOV commuting shall be provided to employees at least once a year. This shall consist of, at a minimum, a summary of the employer's program, including ETC name and phone number. Employers must also provide a summary of their program to all new employees at the time of hire. Each employer's program description and annual report must describe what information is to be distributed by the employer and the method of distribution.
3. **Annual Progress Report.** The CTR program must include an annual review of employee commuting and of progress toward meeting the SOV reduction goals. Affected employers shall file a progress report annually with the City. The employer should contact the City's Benefits

Office for the format of the report. Survey information or alternative information approved by the City Manager's Office shall be required in the reports submitted in the second, fourth, sixth, eighth, tenth, and twelfth years after program implementation begins.

4. **Additional Program Elements.** In addition to the specific program elements described above, the employer's CTR program shall include additional elements as needed to meet CTR goals. Elements may include, but are not limited to, one or more of the following:

- a. Provision of preferential parking or reduced parking charges, or both, for high-occupancy vehicles;
- b. Instituting or increasing parking charges for SOV's;
- c. Provision of commuter ride matching services to facilitate employee ride-sharing for commute trips;
- d. Provision of subsidies for transit fares;
- e. Provision of vans for vanpools;
- f. Provision of subsidies for carpools or vanpools;
- g. Permitting the use of the employer's vehicles for carpooling or vanpooling;
- h. Permitting flexible work schedules to facilitate employees' use of transit, carpools, or vanpools;
- i. Cooperation with transportation providers to provide additional regular or express service to the worksite;
- j. Construction of special loading and unloading facilities for transit, carpool, and vanpool users;
- k. Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;
- l. Provision of a program of parking incentives such as a rebate for employees who do not use the parking facilities;
- m. Establishment of a program to permit employees to work part- or full-time at home or at an alternative worksite closer to their homes;
- n. Establishment of a program of alternative work schedules, such as a compressed work week which reduces commuting; and
- o. Implementation of other measures designed to facilitate the use of high-occupancy vehicles, such as on-site day care facilities and emergency taxi services.

Section 10.70.080 Record Keeping

Affected employers shall maintain all records required by the City of Mercer for a period of six years.

Section 10.70.090 Schedule and Process for CTR Reports, Program Review and Implementation.

- A. **CTR Program** Not more than six months after the adoption of the ordinance codified in this chapter, or within six months after an employer becomes subject to the provisions of this chapter, the employer shall develop a CTR program and shall submit to the City a description of that program for review.
- B. **CTR Annual Reporting Date** Employers will be required to submit an annual CTR report to the City beginning with the first annual reporting date assigned during the initial program submittal. The annual reporting date shall be no less than 12 months from the day the initial program description is submitted. Subsequent years' reports will be due on the same date each year.
- C. **Content of Annual Report** The annual progress report shall describe each of the CTR measures that were in effect for the previous year, the results of any commuter surveys undertaken during the year and the number of employees participating in CTR programs. Survey information or alternative information approved by the City of Mercer Island must be provided in the second, fourth, sixth, eighth, tenth, and twelfth year reports.
- D. **Program Review** The City shall provide the employer with written notification indicating whether a CTR program was approved or deemed unacceptable.
1. Initial program descriptions will be deemed acceptable if: 1) all required information of the program description form is provided; and, 2) the program description includes the following information:
 - a) Name, location and telephone number of the employee transportation coordinator for each work site,
 - b) Plan for and documentation of regular distribution of information to employees about the employer's CTR program at the work site, including alternatives to driving alone to work,
 - c) Plan for and implementation of at least one additional measure designed to achieve the applicable goal.
 2. Annual reports will be deemed acceptable if the annual report form is complete and contains information about implementation of the prior year's program elements and proposed new program elements and implementation schedule. Annual reports must also contain a review of employee commuting and report of progress toward meeting SOV goals.
 3. Beginning in the second measurement year, the programs described in the annual reports will be deemed acceptable if either the SOV trip or the VMT per employee goals have been met. If neither goal has been met, the employer must propose modifications designed to make progress toward the applicable goal in the coming year. If the revised program is not approved, the City shall propose modifications to the program and direct the employer to revise its program within 30 days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.
- E. **Implementation of Employer's CTR Program** The employer shall implement the approved CTR program not more than 180 days after the program was first submitted to the City unless extensions allow for late implementation. Implementation of programs that have been modified based on non-attainment of CTR goals must occur within 30 days following City approval of such modifications.

Section 10.70.100 Good Faith Effort

- A. **Making a Good Faith Effort and Meeting Goals** If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, and meets either or both the applicable SOV or VMT goal, the employer has satisfied the objectives of the CTR plan and will not be required to modify its CTR program.
- B. **Making a Good Faith Effort and Not Meeting Goals** If an employer makes a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, but has not met or is not likely to meet the applicable SOV or VMT goal, the City shall work collaboratively with the employer to make modifications to the employer's CTR program. After agreeing on modifications, the employer shall submit a revised CTR program description to the City for approval within 30 days of reaching an agreement.
- C. **Failing to Make a Good Faith Effort** If an employer fails to make a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, and fails to meet either the applicable SOV or VMT reduction goal, the City shall work collaboratively with the employer to identify modifications to the employer's CTR program and shall direct the employer to revise its program within 30 days to incorporate the modifications or equivalent measures, within 30 days of receiving written notice to revise its program. The City shall review the revisions and notify the employer of acceptance or rejection of the revised program. If a revised program is not accepted, the City will send written notice to that effect to the employer within 30 days and, if necessary, require the employer to attend a conference with program review staff for the purpose of reaching a consensus on the required program. A final decision on the required program will be issued in writing by the City within ten working days of the conference.

Section 10.70.110 Requests for Exemptions / Modifications of CTR Requirements

- A. **Worksite Exemptions** An affected employer may submit a request to the City to grant an exemption from all or a part of the CTR program requirements or penalties for a particular worksite. The employer must demonstrate that it would experience undue hardship in complying with the requirements of the Ordinance as a result of the characteristics of its business, its workforce, or its location. An exemption may be granted if and only if the affected employer demonstrates that it faces extraordinary circumstances, such as bankruptcy, and is unable to implement any measures that could reduce the proportion of SOV trips and VMT per employee. Exemptions may be granted by the City at any time based on written notice provided by the affected employer. The notice should clearly explain the conditions for which the affected employer is seeking an exemption from the requirements of the CTR program. The City shall review annually all employers receiving exemptions and shall determine whether the exemption will be in effect during the following program year.
- B. **Employee Exemptions** Specific employees or groups of employees who are required to drive alone to work as a condition of employment may be exempted from a worksite's CTR program. Exemptions may also be granted for employees who work variable shifts throughout the year and who do not rotate as a group to identical shifts. The City will use the criteria identified in the CTR Task Force Guidelines to assess the validity of employee exemption requests. The City shall review annually all employee exemption requests, and shall determine whether the exemption will be in effect during the following program year.

- C. **Modification of CTR Program Goals** An affected employer may request that the City modify its CTR program. Such requests shall be filed in writing at least 60 days prior to the date the worksite is required to submit its program description and annual report. The goal modification request must clearly explain why the worksite is unable to achieve the applicable goal. The worksite must also demonstrate that it has implemented all of the elements contained in its approved CTR program. The City will review and grant or deny requests for goal modifications in accordance with procedures and criteria identified in the CTR Task Force Guidelines. An employer may not request a modification of the applicable goals until one (1) year after City approval of its initial program description and annual report.
- D. **Modification of CTR Program Elements** If an employer wants to change a particular aspect of its CTR program during the period of time between annual reporting dates, the employer must contact the City.
- E. **Extensions** An employer may request additional time to submit a CTR program or CTR annual progress report, or to implement or modify a program. Such requests shall be made in writing no less than 30 days before the due date to which the extension is being requested. Requests must be made prior to the due date anytime a program submission is going to be more than one week late. Extensions not to exceed 90 days shall be considered for reasonable causes. Employers will be limited to a total of 90 allowed extension days per year. Extensions shall not exempt an employer from any responsibility in meeting program goals. Extensions granted due to delays or difficulties with any program element(s) shall not be cause for discontinuing or failing to implement other program elements. An employer's annual reporting date shall not be adjusted permanently as a result of these extensions. An employer's annual reporting date may be extended at the discretion of the City Manager's Office.

Section 10.70.120 Credit for Transportation Demand Management Efforts

- A. **Credit for Programs Implemented Prior to the Base Year.** Employers with successful TDM programs implemented prior to the 1992 base year may apply to the City for program credit.
1. Employers whose VMT per employee and proportion of SOV trips are already equal to or less than the goals for one or more future goal years, and who commit in writing to continue their current level of effort, shall be exempt from the following year's annual report.
 2. Employers applying for the program credit in their initial 1993 program description shall be considered to have met the 1995 CTR goals if their VMT per employee and proportion of SOV trips are equivalent to a 12 percent or greater reduction from the base year zone values. This three percentage point credit applies only to the 1995 CTR goals.

For the initial year, employer's requests for program credit are due within three months after notification that the employer is subject to this chapter. Requests for program credit must be received by the employer's assigned reporting dates in 1995 and 1997 for succeeding years.

Application for a program credit shall include an initial program description, written commitment on an official report form to maintain program elements and results from a survey of employees, or equivalent information that establishes the applicant's VMT per employee and proportion of SOV trips. The survey or equivalent information shall conform to all applicable standards established in the director's results for implementation of this chapter.

B. Credit for Alternative Work Schedules, Telecommuting, Bicycling and Walking by Affected Employees.

1. The City will count commute trips eliminated through alternative work schedules, telecommuting options, bicycling and walking as 1.2 vehicle trips eliminated. This assumption applies to both the proportion of SOV trips and VMT per employee.
2. This type of credit is applied when calculating the SOV and VMT rates of affected employers.

Section 10.70.130 Employer Peer Review Group

- A. Purpose and Appointment of Members** The City shall appoint member(s) from affected employers to regional or sub-regional employer peer review groups created through inter local agreement with other jurisdictions. The specific functions of the peer review group shall be determined by the inter-local agreement.
- B. Limitations of Peer Review Group** Any peer review group shall be advisory in nature. The City shall not be bound by any comments or recommendations of any peer review group.

Section 10.70.140 Appeals of Administrative Decisions

- A. Appeal of Final Decisions** Employers may file a written appeal of the City's final decisions regarding the following actions:
1. Rejection of an employer's proposed program;
 2. Denial of an employer's request for a waiver or modification of any of the requirements under this chapter or a modification of the employer's program;
 3. Denial of credits requested under MICC 10.70.110.

Such appeals must be filed with the City within 20 days after the employer receives notice of a final decision. Timely appeals shall be heard by the Mercer Island City Council. Determinations on appeals shall be based on whether the decision being appealed was consistent with the state law.

Section 10.70.150 Enforcement

- A. Compliance** For purposes of this section, compliance shall mean submitting required reports and documentation at prescribed times and fully implementing all provisions in an accepted CTR program.
- B. Violations** The following actions shall constitute a violation of this chapter:
1. Failure to implement an approved CTR program, unless the program elements that are carried out can be shown through quantifiable evidence to meet or exceed VMT and SOV goals as specified in this chapter. Failure to implement a CTR program includes but is not limited to:
 - a. Failure to make a good faith effort, as defined in RCW 70.94.534(4) and this ordinance;

- b. Failure of any affected employer to submit a complete CTR program within the deadlines specified in MICC 10.70.090;
 - c. Failure to submit required documentation for annual reports;
 - d. Submission of fraudulent data.
2. Failure to modify a CTR program found to be unacceptable by the City under MICC 10.70.090D.

C. **Penalties** Each day of failure by an employer to (a) implement a commute trip reduction program or (b) modify an unacceptable commute trip reduction program shall constitute a separate violation and shall be considered a Class I infraction pursuant to RCW 7.80.120. The penalty for a violation shall be \$50 per day.

An employer shall not be liable for civil penalties if failure to implement an element of a CTR program was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith. Unionized employers shall be presumed to act in good faith compliance if they: (a) propose to a recognized union any provision of the employer's CTR program that is subject to bargaining as defined by the National Labor Relations Act; and (b) advise the union of the existence of the statute and the mandates of the CTR program approved by the city and advise the union that the proposal being made is necessary for compliance with state law (RCW 70.94.531).

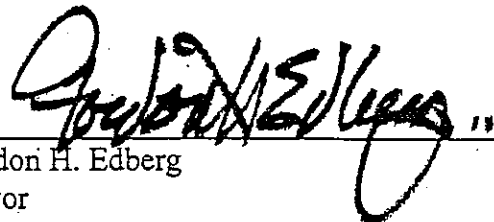
No affected employer with an approved CTR program will be held liable for failure to reach the applicable SOV or VMT goals.

D. **Appeals of Penalties** Affected employers may appeal penalties pursuant to RCW 7.80.100.

Section 2 Severability Clause - If any section, paragraph, subsection, clause or phrase of this ordinance for any reason is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that they would have passed this ordinance and each section, paragraph, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs, clauses or phrases be found to be unconstitutional or invalid.

Section 3 This ordinance shall take effect and be in force (30) thirty days after its passage.

PASSED BY THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON AT ITS
REGULAR MEETING ON THE 21st DAY OF JUNE, 1999.



Gordon H. Edberg
Mayor

ATTEST:



Christine Eggers, City Clerk

APPROVED AS TO FORM:



David Kahn, City Attorney

DATE OF PUBLICATION:

Attachment A: City CTR Agreement
Attachment B: Map of CTR Zone Boundaries

COMMUTE TRIP REDUCTION ACT IMPLEMENTATION AGREEMENT

An Agreement between the King County Department of Transportation (hereinafter called "King County") and the City of Mercer Island ("City"), hereinafter jointly referred to as the "Parties," for the purpose of implementing the Washington State Commute Trip Reduction Act of 1991.

WHEREAS, the Washington State Legislature enacted the Commute Trip Reduction Act (Chapter 202, Laws of 1991, codified as RCW 70.94.521-551) to require local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement plans to reduce vehicle miles traveled per employee and single occupant vehicle commute trips; and

WHEREAS, the City has within its boundaries one or more "major employers" and is required by RCW 70.94.527 to develop and implement a commute trip reduction plan; and

WHEREAS, the Parties hereto are authorized to enter into this Agreement pursuant to RCW 70.94.527 (6); and

WHEREAS, the King County Code 28.94.110 authorizes the execution and administration of Agreements with state and local agencies for assistance in implementing the Commute Trip Reduction Act; and

WHEREAS, the local jurisdiction commute trip reduction plans are required to be coordinated and consistent with plans of adjacent jurisdictions and applicable regional plans; and

WHEREAS, the City and King County desire to implement the Commute Trip Reduction Act consistent with the guidelines established by the state Commute Trip Reduction Task Force and with King County and other cities within the county; and

WHEREAS, the City can achieve cost efficiencies and administrative consistency by contracting with King County for CTR implementation;

NOW THEREFORE, in consideration of the mutual promises and covenants herein, it is hereby agreed:

SECTION 1.0. PURPOSE.

The purpose of this Agreement is to assign certain tasks to be undertaken by King County on behalf of the City to implement the CTR Act.

SECTION 2.0 DEFINITIONS.

The following definitions shall apply for purposes of this Agreement:

"Administrative Representative" means the primary administrative contact for issues related to this Agreement as designated in Section 3.5 of the Agreement.

"Affected Employer" means an employer required by RCW 70.94.521 and the City's CTR Plan to implement a CTR program (see also "major employer").

"Commute Trip Reduction Plan (CTR Plan)" means a plan adopted by the City designed to reduce the proportion of single occupant vehicle commute trips and vehicle miles traveled per employee, as described in RCW 70.94.527.

"Commute Trip Reduction Program (CTR Program)" means a program designed by an affected employer to reduce the proportion of single occupant vehicle commute trips and the commute trip vehicle miles traveled by employees at a worksite, as described in RCW 70.94.531.

"CTR Funds" means state funds authorized by RCW 70.94.544 and Section 301 of the Natural Resources biennial budget to help counties and cities implement commute trip reduction plans.

"Major Employer" means a private or public employer that employs one hundred or more full-time employees at a single worksite who are scheduled to begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve continuous months during the year, as provided in RCW 70.94.521 (herein also known as an "affected employer").

"State" is the Washington State Department of Transportation (WSDOT) unless otherwise noted.

SECTION 3.0 SCOPE OF WORK.

3.1 Scope of Work: The Scope of Work to be completed by King County and the City in accordance with this Agreement is described in Exhibit A: Scope of Work, which by reference is made a part of this Agreement. Funds provided by the City to King County under this Agreement shall be used solely for activities undertaken to fulfill the provisions of the Scope of Work as provided in Exhibit A.

3.2 Regional Cooperation: Some tasks in the Scope of Work are subarea or county-wide and assume that the City will participate with other contracting cities and try to the extent possible to develop policies and products consistent throughout the county to take advantage of economies of scale and cost efficiencies.

3.3 Schedule: The schedule for tasks is indicated in Exhibit A: Scope of Work. A quarterly review of progress to date and anticipated activities will be held with subarea representatives. On-going

review of issues and materials will be conducted with the lead-agency representatives designated by the sub-area.

3.4 Project Organization: The contract-funded position will conduct contractual activities for the jurisdiction. The position will work in a single division which includes other contract staff and report to the CTR Services Supervisor.

3.5 Administrative Representatives: King County and the City shall each designate an administrative representative for matters pertaining to this Agreement.

King County shall be represented by the Manager of Sales and Customer Service or his designee. The City shall be represented by the Director of General Administration or his/her designee.

3.6 State Requirements: At the request of the City, King County shall provide information to the State for monitoring or evaluation activities as outlined in the Interlocal Agreement.

SECTION 4.0 DISBURSEMENT OF FUNDS.

4.1 Budget: The budget for work to be performed through December 31, 1999 is specified in Exhibit B.

4.2 Equipment: Equipment to be purchased under this Agreement shall be used exclusively for the purpose of CTR administration for the City and other jurisdictions in King County. King County shall own all such equipment and maintain it at no additional cost to the City.

4.3 Payment Process: King County shall submit the City's invoice and a quarterly progress report per the schedule indicated below. The City shall make payment to King County within 30 days of receipt of the invoice.

Payment	Fixed Payment	Invoice Submitted No Earlier Than:
1st payment	\$ 1,467.00	March 31, 1999
2nd payment	\$ 1,467.00	June 30, 1999
3rd payment	\$ 1,457.00	September 30, 1999
Final payment	\$ <u>1,467.00</u>	December 31, 1999
Total	\$ 5,868.00	

- 4.4 Payment Amount:** Each payment shall consist of the fixed amount specified above in Section 4.3 plus reimbursement of workshop expenses estimated to be \$289.00. The City shall pay a percentage share of workshop expenses based on the percentage of total registrants for the workshop representing worksites in the City.

The workshop expenses to be shared by the City shall consist of a fixed labor element plus actual nonlabor expenditures. The fixed labor element shall be as follows:

- | | |
|--------------------------|--|
| - ETC Orientation | \$238.00 fixed labor charge per workshop |
| - Program Implementation | \$238.00 fixed labor charge per workshop |
| - Survey Briefing | \$153.00 fixed labor charge per workshop |
| - Additional Workshops | \$34.00 fixed labor charge per hour for King County trainers |

SECTION 5.0 AUDITING OF RECORDS, DOCUMENTS, AND REPORTS.

The State Auditor and any of its representatives shall have full access to and the right to examine during normal business hours and as often as the state Auditor may deem necessary, all the records of the City and King County with respect to all matters covered in this Agreement. Each Party to the Agreement shall have similar access and rights with respect to the records of the other Party. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this Agreement. Such rights last for three (3) years from the date final payment is made hereunder.

SECTION 6.0 EQUAL EMPLOYMENT OPPORTUNITY.

King County agrees to abide by all applicable federal and state statutes and regulations prohibiting employment discrimination.

SECTION 7.0 WOMEN AND MINORITY BUSINESS ENTERPRISE.

King County agrees to abide by the terms of King County Ordinance 12026 in the procurement of materials, supplies, consultant or other services undertaken in the performance of this Agreement.

SECTION 8.0 WAIVER OF DEFAULT.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by an authorized representatives of the County, and attached to the original Agreement.

SECTION 9.0 SEVERABILITY.

Should any clause, phrase, sentence or paragraph of this Agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect if such remainder continues to conform to the terms and requirements of applicable law and the intent of this Agreement.

SECTION 10.0 INDEMNIFICATION AND HOLD HARMLESS.

It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other Party. No joint venture or partnership is formed as a result of this Agreement. Each Party hereto agrees to be responsible and assumes liability for its own negligent acts or omissions, and those of its officers, agents or employees, while performing work pursuant to this Agreement, to the fullest extent required by law, and agrees to save, indemnify, defend, and hold the other Parties harmless from any such liability. In the case of negligence of multiple Parties, any damages allowed shall be assessed in proportion to the percentage of negligence attributable to each Party, and each Party shall have the right to seek contribution from the other Parties in proportion to the percentage of negligence attributable to the other Parties.

The City acknowledges it is solely responsible for its compliance with the CTR Act, and for the adoption, implementation, and enforcement of any ordinances, plans, and programs related to the CTR Act. The City shall indemnify and hold King County harmless from, and shall process and defend, at its own expense, any and all claims, demands, suits at law of equity, actions, penalties, losses, damages, or costs arising out of, in connection with, or incidental to any act or omission of the City or any of its officers, employees, subcontractors or agents in adopting or enforcing any ordinances, plans and programs related to the CTR Act.

The Parties hereto acknowledge that the State of Washington is not liable for damage or claims from damages arising from any act or omission of King County or the City under this Agreement.

SECTION 11.0 AGREEMENT PERIOD.

This Agreement is effective from January 1, 1999. The expiration date for purposes of performing substantive work as described in Exhibit A (Scope of Work) and for incurring costs is December 31, 1999, and for final accounting purposes is January 31, 2000, unless the Parties agree to an extension. Termination of this Agreement does not relieve any of the Parties from any obligations incurred through the date of termination as a result of this Agreement.

SECTION 12.0 AGREEMENT MODIFICATIONS.

This Agreement may be amended, altered, clarified or extended only by written Agreement of the designated administrative representative of the City and King County.

SECTION 13.0 TERMINATION.

- 13.1 Either Party to this Agreement may terminate the Agreement, in whole or in part, upon thirty (30) days advance written notice of the termination to the other Party. If this Agreement is so terminated prior to fulfillment of the terms stated herein, King County shall be reimbursed for all actual direct and related indirect expenses and noncancellable obligations incurred to the date of termination.
- 13.2 If at any time during the Agreement period the State acts to terminate, reduce, modify, or withhold CTR Grant Funds allotted to the City pursuant to RCW 79.94.544 then either Party may terminate this Agreement by giving thirty (30) days advance written notice to the other Party.

Dated this 29th day of March, 1999.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day first above mentioned.

KING COUNTY:

By _____
General Manager, Metro Transit

Approved as to form:

By Wayne J. [Signature]
Assistant City Attorney

OR: _____

CITY OF MERCER ISLAND

By Richard M. [Signature]
City Manager